

I.C.R. 4. Warrant - Summons - Determination of Probable Cause

Idaho Criminal Rule 4. Warrant - Summons - Determination of Probable Cause.

(a) Issuance of warrant. After a complaint is laid before a magistrate, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate may issue a warrant for the arrest of the defendant only after making a determination that there is probable cause to believe that an offense has been committed and that the defendant committed it.

(b) Issuance of summons. After a complaint is filed with a court, (which may be in the form of the Idaho Uniform Citation for a misdemeanor), the magistrate, or the clerk of the court, may issue a summons requiring the defendant to appear before the court at a time certain without first making a determination of whether there is such probable cause.

(c) Issuing warrant or summons, preference for summons. If the magistrate finds such probable cause for a complaint, in determining whether a warrant or summons should issue, the magistrate shall give preference to the issuance of a summons. In making such determination as to whether a warrant or summons shall issue, the magistrate shall consider the following factors:

- (1) The residence of the defendant.
- (2) The employment of the defendant.
- (3) The family relationships of the defendant in the community.
- (4) The past history of response of the defendant to legal process.
- (5) The past criminal record of the defendant.
- (6) The nature of the offense charged.
- (7) Whether there is reasonable cause to believe that the defendant will flee prosecution or will fail to respond to a summons.

(d) Determination of probable cause after arrest without warrant, or upon appearance or failure to appear by a defendant pursuant to a summons. If a defendant is arrested without a warrant or appears before the court pursuant to a summons, the magistrate before whom the defendant first appears shall not order the defendant retained or ordered into custody nor require the defendant to post bond unless the magistrate shall determine there is such probable cause as defined in subsection (a) of this Rule at or before the time of the first appearance of the defendant. The defendant must be released upon the defendant's own recognizance unless and until such determination of probable cause has been made by a magistrate or unless immediate disposition of the complaint has been made; but the complaint shall not be dismissed pending such determination or disposition. If a defendant fails to appear in response to a summons a warrant shall issue if probable cause has been shown.

I.C.R. 4. Warrant - Summons - Determination of Probable Cause

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(e) Hearing to determine probable cause. The probable cause hearing is an informal nonadversary proceeding. The finding of probable cause shall be based upon substantial evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing that there is a factual basis for the information furnished. It shall not be necessary for the defendant to be present at such hearing or to have the right to confrontation and cross-examination of witnesses, nor shall it be necessary to permit the defendant to have or to provide the defendant with counsel. Before making the determination of whether there is such probable cause, the magistrate may require any person, other than the defendant, who appears likely to have knowledge relevant to the offense charged to appear personally and give testimony under oath. The facts which the magistrate considers in determining probable cause shall be placed either in affidavit form, which includes a written certification or declaration under penalty of perjury or shall be testimony under oath placed upon the record. In making the determination of probable cause, the magistrate shall consider all facts as to whether an offense has been committed and whether the defendant has committed it.

(f) Disposition on finding of no probable cause. If the magistrate finds there is no such probable cause, the magistrate shall refuse to issue a warrant, and shall exonerate any bond posted, and shall order the release of the defendant if the defendant is in custody. A finding of a lack of probable cause shall not require the dismissal of the complaint.

(g) Form.

(1) Warrant. The warrant shall be signed by the magistrate and shall set forth the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall identify the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate. The amount of bail may be fixed by the issuing magistrate and endorsed on the warrant at the time of its issuance.

(2) Telegraphic or facsimile copy of a warrant of arrest. After the issuance of a warrant in the form set forth in sub-paragraph (g)(1) above, a copy of that warrant of arrest may be sent by telecommunication process or by facsimile process to any peace officer or other officer serving the warrant. A telegraphic copy should be in the following form:

[Click here](#) [1] for form.

(3) Summons. The summons shall be signed by either the magistrate or the clerk of the court and shall contain the same information as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place and advise the defendant that if the defendant fails to appear at said time and place that a warrant will issue for the defendant's arrest.

(h) Execution or service, and return.

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(1) By whom. The warrant shall be executed by a peace officer or other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action, or by mail.

(2) Territorial limits. The warrant may be executed or the summons may be served at any place within the jurisdiction of the state of Idaho.

(3) Manner of service of warrant. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in possession at the time of the arrest, but the officer shall show the warrant to the defendant as soon as possible. A telegraphic or other copy of the warrant of arrest may be used by the officer at the time of the arrest or for the purpose of showing the warrant to the defendant after the defendant's arrest. If the officer does not have the warrant in possession at the time of arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued.

(4) Manner of service of summons. The summons shall be served upon a defendant by delivering a copy of the summons and complaint to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein, or by mailing it to the defendant by mail to the defendant's last known address. A summons to a corporation shall be served in the same manner as service of a summons on a corporation in a civil action.

(5) Return on warrant. The officer executing a warrant shall make return thereof to the issuing magistrate or any other magistrate before whom the defendant is brought pursuant to Rule 5. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be canceled by the magistrate.

(6) Return on summons. On or before the return date, the person who made service of a summons shall make return thereof to the magistrate before whom the summons is returnable. At the request of the prosecuting attorney, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled, or an unserved summons or a duplicate original thereof, may be delivered by the magistrate to an officer or other authorized person for execution or service.

(Adopted December 27, 1979, effective July 1, 1980; amended April 3, 1981, effective July 1, 1981; amended June 15, 1987, effective November 1, 1987; amended March 27, 1989, effective July 1, 1989; amended June 20, 2013, effective July 1, 2013.)

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Links:

[1] http://www.isc.idaho.gov/./rules/forms/ICR_04_Form.doc